

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LG CAPITAL FUNDING, LLC

Plaintiff,

16 Civ. 2752 (KAM)

-against-

5BARz INTERNATIONAL, INC.
ANSWER TO COMPLAINT
AND AFFIRMATIVE DEFENSES

5BARZ INTERNATIONAL, INC.

Defendant.

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Defendant 5 BARz International, Inc. ('5BARz or Defendant') by way of answer to the Verified Complaint of Plaintiff LG Capital Funding, LLC ('LG or Plaintiff') [ECF1], says:

THE PARTIES

1. 5 BARz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. 5BARz denies the allegations contained in paragraph 2 of the Complaint except that it admits that it is a corporation organized and existing under the laws of the state of Nevada.

JURISDICTION AND VENUE

3. 5BARz denies the allegations contained in paragraph 3 of the Complaint.
4. 5BARz denies the allegations contained in paragraph 4 of the Complaint.
5. 5BARz neither admits nor denies the allegations contained in paragraph 5 of the Complaint and refers to the Convertible Redeemable Note attached as Exhibit A to the Complaint for its full contents.

FACTS COMMON TO ALL CLAIMS

The Note

6. 5BARz admits the allegations contained in paragraph 6 of the Complaint.

7. BARZ neither admits nor denies the allegations contained in paragraph 7 of the Complaint and refers to the Convertible Redeemable Note attached as Exhibit A to the Complaint for its full contents.

8. 5BARZ neither admits nor denies the allegations contained in paragraph 8 of the Complaint and refers to the Convertible Redeemable Note attached as Exhibit A to the Complaint for its full contents.

9. 5BARZ denies the allegations contained in paragraph 9 of the Complaint and, by way of further response, refers to the Convertible Redeemable Note attached as Exhibit A to the Complaint for its full contents.

10. 5BARz denies the allegations contained in paragraph 10 of the Complaint except that it is without knowledge or information sufficient to form a belief as to the truth of the allegations with regard to LG's alleged motivation and refers to the Convertible Redeemable Note attached as Exhibit A to the Complaint for its full contents.

11. 5BARz denies the allegations contained in paragraph 11 of the Complaint except that it neither admits or denies the allegations with regard to the Convertible Redeemable Note attached as Exhibit A to the Complaint and refers to same for its full contents.

LG'S ALLEGED NOTICE OF CONVERSION AND 5BARz's SHARE RESERVE

12. 5BARz denies the allegations contained in paragraph 12 of the Complaint.

13. 5BARz denies the allegations contained in paragraph 13 of the Complaint except that it refers to the referenced Exhibit B for its full contents.

14. 5BARz denies the allegations contained in paragraph 14 of the Complaint except that it is without knowledge or information sufficient to form a belief as to the truth of the allegations with regard to LG's alleged desires.

15. 5BARz denies the allegations contained in paragraph 15 of the Complaint.

16. 5BARz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. 5BARz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18. 5BARz denies the allegations contained in paragraph 18 of the Complaint.

19. 5BARz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.

20. 5BARz denies the allegations contained in paragraph 20 of the Complaint except that it admits that LG purported to send a new notice of conversion.

21. 5BARz denies the allegations contained in paragraph 21 of the Complaint except that it admits that 5BARz has not delivered, and is not required to deliver, the referenced shares.

22. 5BARz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.

5BARZ's Alleged Defaults

23. 5BARz denies the allegations contained in paragraph 23 of the Complaint.

24. 5BARz denies the allegations contained in paragraph 24 of the Complaint.

25. 5BARz denies the allegations contained in paragraph 25 of the Complaint except that it refers to Exhibit A to the Complaint for its full contents.

26. 5BARz denies the allegations contained in paragraph 26 of the Complaint.

27. 5BARz neither admits nor denies the allegations contained in paragraph 27 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

28. 5BARz denies the allegations contained in paragraph 28 of the Complaint except that it is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to alleged notification to LG.

29. 5BARz denies the allegations contained in paragraph 29 of the Complaint.

30. 5BARz denies the allegations contained in paragraph 30 of the Complaint.

31. 5BARz denies the allegations contained in paragraph 31 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

32. 5BARz denies the allegations contained in paragraph 32 of the Complaint.

33. 5BARz denies the allegations contained in paragraph 33 of the Complaint except that it refers to Exhibit A to the Complaint for its full contents.

34. 5BARz denies the allegations contained in paragraph 34 of the Complaint except that it admits that it has not delivered shares, nor that LG has any right to such delivery.

35. 5BARz is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint.

Remedies

36. 5BARz denies the allegations contained in paragraph 36 of the Complaint.

37. 5BARz neither admits nor denies the allegations contained in paragraph 37 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

38. 5BARz neither admits nor denies the allegations contained in paragraph 38 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

39. 5BARz denies the allegations contained in paragraph 39 of the Complaint.

40. 5BARz denies the allegations contained in paragraph 40 of the Complaint.

41. 5BARz denies the allegations contained in paragraph 41 of the Complaint.

42. 5BARz denies the allegations contained in paragraph 42 of the Complaint.

43. 5BARz denies the allegations contained in paragraph 43 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

44. 5BARz denies the allegations contained in paragraph 44 of the Complaint.

45. 5BARz denies the allegations contained in paragraph 45 of the Complaint.

46. 5BARz denies the allegations contained in paragraph 46 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

47. 5BARz denies the allegations contained in paragraph 47 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

48. 5BARz denies the allegations contained in paragraph 48 of the Complaint and refers to Exhibit A to the Complaint for its full contents.

First Claim Alleged Failure Deliver Shares –Injunctive Relief

49. 5BARz refers to and incorporates herein its prior answers to the allegations of the Complaint.

50. 5BARz denies the allegations contained in paragraph 50 of the Complaint.

51. 5BARz denies the allegations contained in paragraph 51 of the Complaint.

52. 5BARz denies the allegations contained in paragraph 52 of the Complaint.

53. 5BARz denies the allegations contained in paragraph 53 of the Complaint.

54. 5BARz denies the allegation contained in paragraph 54 of the Complaint.

55. 5BARz denies the allegations contained in paragraph 55 of the Complaint, inasmuch as LG is not entitled to the relief requested.

Second Claim for Relief –Alleged Failure Deliver Shares - Damages

56. 5BARz refers to and incorporates herein its prior answers to the allegations of the Complaint.

57. 5BARz denies the allegations contained in paragraph 57 of the Complaint.

Third Claim for Relief – Alleged Failure to Reserves Shares – Injunction

58. 5BARz refers to and incorporates herein its prior answers to the allegations of the Complaint.

59. 5BARz denies the allegations contained in paragraph 59 of the Complaint.

60. 5BARz denies the allegations contained in paragraph 60 of the Complaint.

61. 5BARz denies the allegations contained in paragraph 61 of the Complaint.

62. 5BARz denies the allegations contained in paragraph 62 of the Complaint.

63. 5BARz denies the allegations contained in paragraph 63 of the Complaint.

64. 5BARz denies the allegations contained in paragraph 64 of the Complaint.

Fourth Claim for Relief – Alleged Conversion - Injunction

65. 5BARz refers to and incorporates herein its prior answers to the allegations of the Complaint.

66. 5BARz denies the allegations contained in paragraph 66 of the Complaint.

67. 5BARz denies the allegations contained in paragraph 67 of the Complaint.

68. 5BARz denies the allegations contained in paragraph 68 of the Complaint.

69. 5BARz denies the allegations contained in paragraph 69 of the Complaint.

70. 5BARz denies the allegations contained in paragraph 70 of the Complaint.

Fifth Claim for Relief – Alleged Conversion – Damages

71. 5BARz refers to and incorporates herein its prior answers to the allegations of the Complaint.

72. 5BARz denies the allegations contained in paragraph 72 of the Complaint.

Sixth Claim for Relief – Alleged Costs Expenses and Attorney’s Fees

73. 5BARz refers to and incorporates herein its prior answers to the allegations of the Complaint.

74. 5BARz denies the allegations contained in paragraph 74 of the Complaint.

75. 5BARz denies the allegations contained in paragraph 75 of the Complaint.

WHEREFORE, 5BARz demands judgment in its favor and against LG, dismissing the Complaint, with prejudice and awarding it costs and such other relief as this Court may deem equitable and just.

AFFIRMATIVE DEFENSES

In an abundance of caution, Defendant alleges the following affirmative defenses. These allegations are raised strictly as defenses and are not to be considered admissions of Defendant as to any factual, legal, or other matters.

FIRST AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts that each of the causes of action fails to state a claim upon which relief can be granted, especially as Plaintiff has not suffered any damages as Plaintiff still maintains its ability to convert pursuant to a properly issued Notice of Conversion.

SECOND AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts that this Court does not have jurisdiction of the parties.

THIRD AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts that this Court does not have jurisdiction over the subject matter of Plaintiff's claims.

FOURTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts that Plaintiff's claims are barred and/or violative of usury laws in Florida, New York, and Connecticut.

FIFTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts Plaintiff's claims are barred by the doctrine of unclean hands and bad faith since Plaintiff purported to execute a notice of conversion different from that contained in Exhibit A to the Complaint, had the purported notice executed and served improperly and was wholly ineffective.

SIXTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts Plaintiff's claims are barred because Plaintiff failed to satisfy all conditions precedent, including, but not limited to, failing to deliver a proper Notice of Conversion as well as have such Notice properly executed and served.

SEVENTH AFFIRMATIVE DEFENSE

Defendants affirmatively allege and assert that Plaintiff has remedies at law, which prohibit Plaintiff's entitlement to certain types of equitable relief, including, but not limited to, injunctive relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate Plaintiff's purported damages.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver, especially as Plaintiff had knowledge of purported breaches by Defendant, including, but not limited to, the changing of the Defendant's

transfer agent. Plaintiff failed to take any concurrent action against Defendant for these purported breaches and thereby waived its right to bring its claims.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel, especially as Plaintiff had knowledge of purported breaches by Defendant, including, but not limited to, the changing of the Defendant's transfer agent. Plaintiff deliberately failed to take any concurrent action against Defendant for these purported breaches and thereby is estopped from bringing its claims. Further, Plaintiff was at all times aware of Defendant's financial status and is estopped from claiming otherwise.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges and asserts that Plaintiff has not suffered any damages as Plaintiff still maintains its ability to convert pursuant to a properly issued, executed, and served Notice of Conversion.

RESERVATION OF DEFENSES

Defendant expressly reserves the right to amend and/or add additional affirmative defenses as facts are developed through discovery and investigation continues and/or withdraw any of the aforementioned defenses.

ATTORNEYS' FEES

Defendant has been forced to retain the services of the undersigned counsel and is obligated to pay a reasonable attorneys' fee for their service supportable by written agreement and statute.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served through the Court's CM/ECF system on all counsel or parties of record on the attached service list, this 11th day of October 2016.

Respectfully submitted,

Counsel for Defendant

/s/ Sheryl Mintz Goski

Sheryl Mintz Goski, Esq.

Registration No. 2072189

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